IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 543 OF 2003

IN

SUMMARY SUIT NO. 479 OF 2003

Udaykumar Mishra .. Plaintiff

versus

Chandru Dhanwani & Anr. .. Defendants

...

Mr.O.P. Pandey for the plaintiff.

None for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 9th March 2005.

P.C.:

1. Heard the learned counsel for the plaintiff. None present for the defendants.

2. The defendants have also not filed any affidavit in reply in the Court. The learned counsel for the plaintiff however states that a copy of the

reply in advance was served on him and hands in the copy. I have perused the said copy and the defences raised therein are considered hereafter.

3. For a valuable consideration, the defendant no.1, who is the proprietor of defendant no.2, issued a cheque dated 12th December 2001 to the plaintiff in the sum of Rs.1,25,000/-. However, the said cheque was dishonoured when presented for payment. The plaintiff therefore, has filed this suit for recovery of the amount of the said cheque and interest thereon u/s.80 of the Negotiable Instruments Act.

4. In the affidavit in reply served on the plaintiff in advance the defendants have not denied issuance of the cheque. They however contended that cheque was without consideration. Under section 118 of the Negotiable Instruments Act, there is a presumption of consideration and mere denial of consideration would not be a sufficient defence. Furthermore, the plaintiff had issued a notice dated 8th January 2002. However, no reply was sent to the said notice. If there was really a failure of consideration, the defendants would have sent the reply and explained the circumstances in which the

cheque was issued. In the circumstances, in my view, the defence of failure of consideration is an afterthought. In view of this, the plaintiff is ordinarily entitled to a decree forthwith. However, merely as an act of mercy, I am inclined to grant conditional leave to defend the suit to the defendants. Hence, I pass the following order:-

5. The defendants are accordingly granted conditional leave to defend the suit subject to their depositing in the Court the principal amount of the cheque being Rs.1,25,000/- within a period of four weeks. On such deposit, the plaintiff is permitted to withdraw the same by furnishing security to the satisfaction of Registrar (OS) and Prothonotary.

6. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendant shall then file written statement within a period of one month.

D.G. KARNIK, J